



Committee for Justice

Report on the Legislative Consent Memorandum on the Arbitration Bill

Ordered by the Committee for Justice to be published on 21 November 2024.

Report: NIA 62/22-27 Committee for Justice

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Powers and Membership

Powers

The Committee for Justice is a Statutory Departmental Committee established in accordance with paragraphs 8 and 9 of the Belfast Agreement, Section 29 of the Northern Ireland Act 1998 and under Standing Order 48. The Committee has a scrutiny, policy development and consultation role with respect to the Department of Justice and has a role in the initiation of legislation.

The Committee has power to:

- consider and advise on Departmental budgets and annual plans in the context of the overall budget allocation;
- consider relevant subordinate legislation and take the Committee Stage of primary legislation;
- call for persons and papers;
- initiate inquiries and make reports; and
- consider and advise on matters brought to the Committee by the Minister of Justice.

Membership

The Committee has nine members, including a Chairperson and Deputy Chairperson, and a quorum of five members. The membership of the Committee is as follows:

- Joanne Bunting MLA (Chairperson)
- Deirdre Hargey MLA (Deputy Chairperson)¹
- Doug Beattie MLA
- Maurice Bradley MLA
- Stephen Dunne MLA²
- Connie Egan MLA³
- Sinéad Ennis MLA⁴
- Ciara Ferguson MLA
- Justin McNulty MLA

¹ With effect from 28 May 2024, Miss Deirdre Hargey replaced Mrs Sinéad Ennis as Deputy Chairperson

² With effect from 16 September 2024, Mr Stephen Dunne replaced Mr Alex Easton

³ With effect from 11 November 2024, Ms Connie Egan replaced Mr Stewart Dickson

⁴ With effect from 15 May 2024, Mrs Sinéad Ennis replaced Miss Deirdre Hargey as Deputy Chairperson

Background

1. The Arbitration Bill (“the Bill”), was introduced to the House of Lords on 18 July 2024, and extends to England, Wales and Northern Ireland.
2. Lord Ponsonby of Shulbrede, the Parliamentary Under-Secretary of State in the Ministry of Justice, wrote to the Minister of Justice on 18 July 2024 to ask if she would seek legislative consent. The Minister laid the Legislative Consent Memorandum before the Assembly on 8 November 2024.
3. Arbitration is a form of dispute resolution. If two or more parties have a dispute that they cannot resolve themselves, instead of going to court, they might appoint a third person as an arbitrator to resolve the dispute for them, or a panel of arbitrators to act as an arbitral tribunal.
4. Arbitration happens in a wide range of settings, both domestic and international, including family law and rent reviews, commodity trades and shipping, and international commercial contracts.

Review of the Arbitration Act 1996

5. The Arbitration Act 1996 sets out the law governing arbitration in the UK, including domestic, consumer, small claims and statutory arbitrations. It also covers the recognition and enforcement of foreign awards under the Geneva and New York Conventions.
6. In 2021, the Ministry of Justice asked the Law Commission in England and Wales to review the Arbitration Act 1996. The Law Commission’s report⁵ in September 2023 noted a widespread view that the Act works well and that “root and branch reform is not needed or wanted”. It consequently made recommendations for a few major initiatives and a number of minor corrections.

⁵ [Law Commission \(2023\) *Review of the Arbitration Act 1996: Final report and Bill* OGL](#)

The previous Government agreed to implement the recommendations through the Arbitration Bill.

Previous Arbitration Bill

7. A previous Arbitration Bill was introduced to the House of Lords on 21 November 2023, extending to England, Wales and Northern Ireland. The Bill had its Second Reading on 17 January 2024 and was referred to a Lords Special Public Bill Committee. The Bill fell when Parliament was dissolved for the UK general election in May 2024.

The Arbitration Bill

8. The Bill seeks to amend the Arbitration Act 1996, and has 18 clauses. All of the clauses extend to Northern Ireland. The Bill is broadly similar to the version introduced in the previous parliamentary session. The Department of Justice advised⁶ the Committee for Justice that it incorporates some minor and technical amendments resulting from the Lords Special Public Bill Committee Stage in the previous Parliament.
9. Specifically, officials advised⁷ the Committee that the Bill corrects a minor drafting error in relation to the 1996 Act. The main difference was a change to Clause 1, which relates to the law applicable to arbitration agreements.

The Bill replaces the common law position with a new statutory rule (SR) to provide that the law governing the arbitration agreement, which is distinct from the law that will govern the contract — the subject of the arbitration — between the parties will be the law of the seat where the arbitration is taking place, unless the parties have expressly agreed otherwise.

⁶ [Correspondence dated 15 October 2024](#)

⁷ [Northern Ireland Assembly Official Report: Minutes of Evidence, Committee for Justice, meeting on Thursday 24 October 2024](#)

The Bill as reintroduced makes it clear that that provision will not apply to arbitration agreements that are derived from standing offers to arbitrate, which may be contained in treaties and legislation relating to state foreign investment, because those are usually governed by international law. It was therefore agreed that that provision would not apply. It is a technical matter.

Purpose of the Legislative Consent Memorandum

10. The Arbitration Bill gives effect to the recommendations of the Law Commission to amend the Arbitration Act 1996 as it applies in England and Wales, and in Northern Ireland, subject to devolved consent.⁸ The stated intent of the Bill is to further the principle found in section 1 of the Arbitration Act 1996: to obtain the fair resolution of disputes by an impartial tribunal without unnecessary delay or expense.⁹
11. The Department of Justice advised the Committee in correspondence¹⁰ that it understood that there is no appetite for divergence from practice in England and Wales and that common practice and procedure is positive, particularly for businesses that operate in both jurisdictions.

There are also no specific Northern Ireland issues that require consideration beyond the differing processes for making amendments to court rules. The Department's concern is that, if Northern Ireland was not included in the Bill, it would operate a different arbitral framework which would not be of advantage to businesses here, or businesses that operate on a UK wide basis.

⁸ [Scotland has separate arbitration legislation](#)

⁹ [Arbitration Bill \[HL\] Explanatory notes](#)

¹⁰ [Correspondence dated 15 October 2024](#)

12. The Bill contains a number of minor changes to the Arbitration Act 1996 and includes the following key initiatives:¹¹

- clarification of the law applicable to arbitration agreements;
- codification of an arbitrator's duty of disclosure;
- strengthening of arbitrator immunity around resignation and applications for removal;
- introduction of a power for arbitrators to dispose summarily of issues which have no real prospect of success;
- clarification of court powers in support of arbitral proceedings, and in support of emergency arbitrators; and
- a revised framework for challenges under section 67 of the Arbitration Act 1996 (where the challenge alleges that the arbitral tribunal lacked jurisdiction).

Committee Consideration of the Legislative Consent Memorandum

13. The Committee initially considered the Arbitration Bill that later fell upon the dissolution of the previous Parliament (2023-2024 session). The Committee received written evidence from the Department of Justice and agreed to write for further information, which was provided on 17 May 2024.

14. The Committee also wrote to the Law Society of Northern Ireland and the Bar of Northern Ireland to seek their views on the proposed legislative consent memorandum on the Arbitration Bill. It agreed to forward the briefing to the Committee for Finance and the Committee for the Economy as a number of clauses in the Bill related to responsibilities under the remit of those

¹¹ [Arbitration Bill \[HL\] Explanatory notes](#)

Departments. It received responses from the Federation of Small Businesses (FSB) Northern Ireland and the Law Society of Northern Ireland. Both were broadly supportive of the legislation.

15. The Law Society commented that it agreed with the proposed adjustments to the 1996 Act and that it supported the Bill. It also noted that the development of new technologies such as AI may significantly impact on the way that arbitration takes place, noting that this will require observation in the time ahead.
16. The FSB said it had received two submissions from members who are lawyers. One thought that the business community in Northern Ireland would welcome the proposed changes as the Bill should provide greater clarity, simplicity and address anomalies in the current Act.
17. The other FSB submission said that there “seems to be no good reason to depart from the approach in England and Wales,” suggesting that case law from those jurisdictions was beneficial in determining issues such as enforcing arbitrators’ awards and when considering preliminary and substantive decisions by way of arbitration.
18. The Department of Justice wrote to the Committee on 15 October 2024 to inform it of the Minister’s intention to lay a Legislative Consent Memorandum before the Assembly on the Arbitration Bill before the UK Parliament (2024-2025 session).
19. At its meeting on 24 October 2024, the Committee considered correspondence from the Department regarding the background to the Bill and its provisions. Officials provided oral evidence on the Bill.
20. Officials commented that the scope and nature of this Bill was very similar to that which fell due to the dissolution of the previous UK Government. They stated that it was the Department’s view that there are no issues specific to Northern Ireland that require a different approach to that in England and Wales.

21. The Committee sought clarification on a number of issues, including the likelihood of changes being made to the Bill. Officials suggested that major amendments were unlikely due to its technical nature. They also commented that there is wide support for the Bill.
22. The Committee heard that the Law Commission in England and Wales had carried out two consultation phases, with a large number of responses. Officials stated that there had been good engagement with key stakeholders including those in Northern Ireland, both through the Law Commission, and also through Mr Justice Scoffield.
23. The Committee for Finance responded to the Committee for Justice to note that it was content with the proposal to include Northern Ireland in the Bill, subject to its approval by the Executive.
24. The Committee for Justice was content for the Legislative Consent Memorandum to be laid before the Assembly as soon as possible. The Legislative Consent Memorandum for the Arbitration Bill 2024 was laid by the Department of Justice on 8 November 2024.
25. At its meeting on 24 October 2024, *the Committee agreed that it was content with the proposal to extend the provisions within the Arbitration Bill 2024 to Northern Ireland by way of a Legislative Consent Motion.*

Conclusion

26. Following consideration of the Legislative Consent Memorandum laid before the Assembly on 8 November 2024, *the Committee for Justice agreed to support the Minister of Justice in seeking the Assembly's endorsement of the Legislative Consent Motion:*

“That this Assembly endorses the principle of the extension to Northern Ireland of the provisions in the Arbitration Bill.

Links to Appendices

Appendix 1: Memoranda and Papers from the Department of Justice

[View Memorandum and Papers supplied to the Committee by the Department of Justice](#)

Appendix 2: Memoranda and Papers from Others

[View Memoranda and Papers supplied to the Committee from other individuals or organisations](#)

Appendix 3: Minutes of Proceedings

[View Minutes of Proceedings of Committee meetings related to the report](#)

Appendix 4: Minutes of Evidence

[View Minutes of Evidence from evidence sessions related to the report](#)

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